UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,290	03/10/2004	Robert R. Gordon	GORC.001CP2	4423

20995 7590 07/21/2006

KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER	
DRODGE, JOSEPH W	

ART UNIT	PAPER NUMBER
1723	

DATE MAILED: 07/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/797,290	GORDON, ROBERT R.	
	Examiner	Art Unit	
	Joseph W. Drodge	1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-31* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *10-21* is/are allowed.

6)☒ Claim(s) *1-9 and 22-31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *0905*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 9, "the vent line" lacks antecedent basis and "wherein in" is confusing; the claim apparently was intended to depend from claim 8.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/834,603 in view of Jones patent 2,024,646. The instant claim substantially differs from claim 1 of '646 in the recitation of a blocking member for periodically blocking flow of flushing fluid to the backwashing apertures positioned in the manifold chamber. However, Jones suggest such blocking member 54,55 or 59 (column 2, line 53-column

3, line 18) to prevent unwanted back flow of backflushing fluid which would contaminate the backwash supply and to control timing of backwashing flow.

This is a provisional obviousness-type double patenting rejection.

Claims 1 and 7-9 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 8-12 of U.S. Patent No. 6,875,364. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims primarily differ from the '364 claims in reciting apertures being in a second member rather than a second surface of the manifold and in reciting the blocking member as rotatably traversing a groove rather than merely rotatably moving. However, manifold surfaces are inherently associated with members, and blocking members conventionally traverse grooves or channels when moving from blocking to a non-blocking position.

Claims 1 and 7-9 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 8-12 of U.S. Patent No. 6,758,344 in view of Jones patent 2,024,646. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims firstly differ from the '364 claims in reciting apertures being in a second member rather than a second surface of the manifold, manifold surfaces however inherently associated with members, and in reciting blocking members conventionally traverse grooves or channels when moving from blocking to a non-blocking position and in reciting the blocking member a blocking member for periodically blocking flow of flushing fluid to the backwashing apertures positioned in the manifold chamber. However, Jones suggest

such blocking member 54,55 or 59 (column 2, line 53-column 3, line 18) to prevent unwanted back flow of backflushing fluid which would contaminate the backwash supply and to control timing of backwashing flow.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 22-24,26-29 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Beckley et al patent 3,262,878.

Beckley discloses means for filtering 20,34,36, 1st flow of fluid to be filtered 10,18, backwashing the filter with a 2nd flow of fluid 26 and introducing a 3rd enhancing material to a region proximate the filter through a 3rd flow of fluid 22, the introducing being separated and independently performed from the backflushing (column 2, lines 40-41). The enhancing material may be either a flocculent or a coagulant at column 2, lines 42-53 for claims 24,26,29 and 31. The 1st flow of fluid is inherently introduced to atmospheric pressure, somewhere upstream of the filter, since it is disclosed as "plant raw water" (column 2, line 9) for claims 23 and 28.

With regard to claims 27-31, each of "means for filtering", "means for backflushing" and "means for introducing..." are deemed to constitue 112@6th paragraph limitations, with means for filtering interpreted as any filtering medium effective to remove suspended or solids from a fluid stream, "means for backflushing" interpreted as any fluid handling components effective to provide a supply of fluid for reverse flow through the filter, and "means for introducing" to constitute any tube or conduit from a source of material for treating the fluid being filtered in some way.

Claims 22,25,27 and 30 are rejected under 35 U.S.C. 102(e) as being anticipated by Broussard patent 6,790,345 based on the filing date of the Broussard provisional application of July 16, 2001.

Broussard discloses means for filtering 13-15, 1st flow of fluid to be filtered (column 6, lines 7-9), backwashing the filter with a 2nd flow of fluid (column 8, lines 30-42) and introducing a 3rd enhancing material to a region proximate the filter through a 3rd flow of fluid (column 6, lines 34-52), the introducing being separated and independently performed from the backflushing (column 6, lines 39-40). The enhancing material is a disinfection agent for claims 25 and 30 (column 6, lines 40-42).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shiban patent 4,210,539 in view of Jones patent 2,024,646. Shiban discloses filter element 22, supply lines for fluid to be filtered 6 and 25, filter basket 20/21/24, supply line for flushing medium 43 (column 3, lines 56-60), manifold 32/36 (column 3, lines 60-62), the conduit intersections where branching occurs defining a chamber, the manifold having a 1st member 13 with supply line opening and 2nd member having apertures 38a and 39a, plurality of tubes 38,39 that are enclosed within the filter element, each tube extending from the apertures to backflushing perforations 41. The instant claims do not positively recite structural limitations defining the supply line only being associated with the manifold and flushing medium.

The claims differ in requiring a blocking member positioned in the chamber and operative to rotably traverse a groove and periodically block flow of flushing medium. However, Jones suggest such blocking member 54/55/59 that traverses valve chamber groove 42 (page 2, column 1, line 53-column 2, line 39). The Jones apparatus is also a submerged filter filtering intake fluid to a pump, as in Shiban. It would have been obvious to one of ordinary skill in the art to have supplemented the Shiban apparatus

with the blocking member of Jones, in order to control flow of backflushing medium to only occur when backflushing is desired when the filter or screen becomes clogged, and to prevent backflow of contaminants into the supply of backflushing medium.

For claim 2, see Shiban at column 3, lines 37-47 regarding backwash sprays.

For claims 3-7, the pipe chambers of Shiban define channels, grooves or ovals.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shiban in view of Jones as applied to claims 1-7 above, and further in view of Odd PGPUBS Document US2002/0054818, filed November 2, 2001. Claims 8 and 9 differ from Shiban in requiring the supply line to be coupled to a vent line to couple the internal chamber of the filter to atmosphere. Odd teaches such vent line for a submerged filter to the intake of a pump (figure 2 and paragraph 28). It would have been further obvious to one of ordinary skill in the art to have added the vent line of Odd to the internal chamber of the Shiban apparatus, to provide the desired pressure to the the pump and thus desired pressure to the end use of the filtered water.

ALLOWABLE SUBJECT MATTER

Claims 10-21 are deemed to distinguish over the closest prior art deemed to constitute Shiban patent 4,210,539, Broussard patent 6,790,345 and Jones patent 2,024,646 in view of recitation within independent claim 10 of the 1st and 2nd members of the manifold defining separate internal chambers connecting with separate opening and separate respective plurality of apertures with one such set of apertures operative to backflush the filter element and the other set of apertures surrounding the filter

element and operative to provide an enhancing material. Shiban and Jones together suggest or teach a backflushing manifold associated with a filter basket, having members defining a single chamber communicating with a single set of tubes and apertures to provide flushing medium to backflush a filter element, while Broussard teach enhancing material being provided into a filtering chamber having a filtering element that is separate from a manifold chamber for backwashing the filter element.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Drodge at telephone number 571-272-1140. The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker, can reached at 571-272-1151. The fax phone number for the examining group where this application is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either private PAIR or Public PAIR, and through Private PAIR only for unpublished applications. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JWD

July 18, 2006